

**Before The  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

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**In the Matter of**

**Revision of the Commission's Rules To  
Ensure Compatibility With Enhanced 911  
(E911) Emergency Calling Systems**

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**CC Docket 94-102**

To: Wireless Telecommunications Bureau

**REQUEST OF HIGHLAND CELLULAR, LLC FOR A LIMITED  
WAIVER AND EXTENSION OF THE COMMISSION'S PHASE II E911 RULES**

Highland Cellular, LLC ("HCI"), pursuant to 47 C.F.R. § 1.925, hereby requests a two-year waiver and extension of certain of the Phase II enhanced 911 (E911) requirements set forth in 47 C.F.R. § 20.18. As set forth below, based on the unique and unusual circumstances, strict application of the Phase II E911 rules would be inequitable and unduly burdensome to HCI. Further, grant of the limited waiver and extension request would serve the public interest.

**Background**

HCI is a Tier III carrier as defined by the Commission's rules.<sup>1</sup> It is licensed to operate cellular systems in rural West Virginia and Virginia. HCI currently provides TDMA service within its licensed service area. However, in 2002, shortly after the national TDMA carriers (AT&T Wireless and Cingular) decided to overlay their existing networks with a GSM network, HCI made a business decision to transition to GSM in order to support the substantial roaming

traffic that enters its service area and to insure that its subscribers can roam outside its service area. Subsequently, HCI signed a purchase agreement with Nortel Networks in October, 2002 for the construction of a GSM network. HCI expects its GSM network to be fully operational by October 2003. It also expects that certain complications may arise in the following 3-4 months, as the network migration process is a very complex procedure.

HCI initially notified the Commission that it intended to utilize a handset-based solution to meet the E911 requirements.<sup>2</sup> HCI had determined that a handset-based technology would be the most viable solution for carriers that serve rural markets. The Commission itself has formally recognized this.<sup>3</sup> Unfortunately, GPS-enabled handsets are not available in GSM systems to timely meet the Commission's E911 requirements. Further, because of the rural nature of HCL's service area, a network-based technology may not be fully functional. Specifically, HCL believes a network-based solution will not be able to meet the Commission's accuracy and reliability requirements. As the Commission is fully aware, network-based carriers face significant problems with respect to accuracy in rural markets due to low density and/or linear cell site configuration. Therefore, at this time, HCL is still evaluating whether to use a network-based or handset-based solution for its GSM network.

### **Relief Sought**

HCI has received Phase II requests from the following six PSAPs: Raleigh County, Fayette County, Mercer County, Summers County, Greenbrier County and Monroe County. HCI requests that the Commission forbear from applying the E911 rules to its TDMA network.

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<sup>1</sup> Tier II Carriers were defined as all other non-nationwide carriers. See Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Order to Stay (rel. July 26, 2002) (E911 Small Carriers Order).

<sup>2</sup> See HCI's E911 Phase II Report on file with the Commission.

<sup>3</sup> Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, *Third Report and Order*, 14 FCC Rcd 17,388, 17,390-91 (1999).

With respect to its GSM system, HCI seeks a a two year extension to allow them to implement a fully functional handset-based or network-based Phase II E911 solution.

### **Discussion**

As a general matter, a waiver is appropriate whenever special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.<sup>4</sup> The Commission has established standards to be used when acting upon requests for a waiver of E911 deadlines and obligations.<sup>5</sup> It will grant waiver requests that are specific, focused, and limited in scope, with a clear path to full compliance.<sup>6</sup> Further, carriers should undertake concrete steps necessary to come as close as possible to full compliance and should document their efforts aimed at compliance in support of any waiver request.<sup>7</sup> As set forth below, HCI meets the Commission's standards and that the circumstances underlying the request, in sum, present a special case that justifies a limited E911 Phase II waiver and extension.

The circumstances surrounding HCI's waiver and extension request are "unique and unusual." Because of the its business decision to transition to a GSM network in order to accommodate its larger, more financially secure roaming partners, HCI was forced to re-evaluate its Phase II E911 solutions. A circumstance beyond HCI's control. Further, as a small, rural wireless carrier that does not have access to the same financial markets available to the larger carriers, HCI must first focus its financial resources on completing its GSM network. HCI is not in a financial position to undertake both the construction of a GSM network and the installation of a Phase II E911 solution; an onerous process which would require, at the very least, a

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<sup>4</sup> 47 C.F.R. § 1.3; *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D. C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D. C. Cir. 1969)).

<sup>5</sup> *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, Fourth Memorandum Opinion and Order, 15 FCC Rcd 17442, 17457-58, paras. 43-44 (2000) (*E911 Fourth Memorandum Opinion and Order*).

<sup>6</sup> *E911 Fourth Memorandum Opinion and Order*, 15 FCC Rcd at 17458, para. 44.

substantial amount of additional cell sites given the rural nature of its markets. That is, should it employ a network-based solution, which is their only option at this time since there are no Phase II capable handsets for use on GSM networks. The costs of implementing a network-based Phase II solution at this time is onerous for a small, rural carrier, such as HCI. Hence, requiring HCI to strictly comply with the Phase II E911 rules would result in a severe financial strain and jeopardize them as an on-going concern.

HCI requests that the Commission forbear from applying the Phase II E911 rules to its TDMA network. First, it will be providing Phase I service in a majority of its service area on its TDMA network. Because of the rural nature of HCI's service area, Phase I service is just as critical as providing Phase II service in some locations. Second, there are no commercially available handset-based solutions for TDMA subscribers. Third, as explained above, a network-based solution is not the best Phase II solution for rural markets. Fourth, there is no manufacturer continuing to commit to an ALI TDMA solution; network or handset based; a circumstance beyond the control of HCI. Finally and most importantly, as HCI is in the process of transitioning to its GSM network as quickly and reasonably as it can under the circumstances, any investment toward its TDMA network to become Phase II E911 compliant at this time would be a lost investment. This is especially burdensome since a network-based solution, the only available Phase II E911 solution at this time, would require the installation of addition cell sites. Therefore, HCI seeks forbearance on its TDMA network until it completes its customer migration to its GSM network.

Nonetheless, as its only viable alternative, HCI is in the process of undertaking the following steps with regard to the possible installation of a GSM network-based solution in light of the obvious fact that it would not be the best solution: (1) obtaining proposals from several

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<sup>7</sup> *Id.*

vendors which offer GSM based network location solutions; (2) obtaining engineering studies from these vendors, which identify the level of accuracy that can be achieved, given HCI's cell site configuration and geography; (3) selecting a vendor based upon pricing and technical details; (4) identifying deployment plan (network based location technology is likely to require additional antenna placement. As a result, detailed studies of cell sites and tower strength will be necessary). (5) conducting tower and cell site upgrades that are necessary to install equipment. (6) installing equipment at cell sites and within switch; (7) conducting network integration and testing; and (8) conducting tests with PSAPs.

### **Schedule for Compliance**

HCI will begin migrating its TDMA customers to its GSM network in November, 2004. It expects ultimate transition to take several years, and will abandon its TDMA network only upon migration of all its current TDMA customers to GSM. It would be impractical for the Commission to force HCI to expend substantial monies now on Phase II compliance when its GSM system is in the early stages of roll-out. Within two years, HCI anticipates that a substantial portion of its TDMA subscribers will be transitioned onto its GSM network. Hence, HCI seeks a two-year extension of the Phase II E911 rules with respect to its GSM network.

**Conclusion**

Based on the foregoing reasons, grant of a limited waiver of the Commission's Phase II E911 rules will serve the public interest.

Respectfully submitted,

HIGHLAND CELLULAR, LLC

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\_\_\_\_\_/s/\_\_\_\_\_  
David A. LaFuria  
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Its Attorneys

August 29, 2003

**DECLARATION OF JONATHON D. FOXMAN**

I, Jonathon D. Foxman, declare under penalty of perjury that the foregoing is true and correct.

1. I am the President of Highland Cellular, LLC.
2. I am familiar with the facts contained in the foregoing Request for Waiver of the Commission's Phase II E911 Rules, and I verify that those facts are true and correct to the best of my knowledge and belief, except that I do not and need not attest to those facts which are subject to official notice by the Commission.

\_\_\_\_\_/s/\_\_\_\_\_  
Jonathon D. Foxman  
August 29, 2003